SUPREME COURT, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1966.

No. 1075

LESLIE D. STICKLER,
Petitioner,

v.

DAN TEHAN,
Sheriff of Hamilton County, Ohio,
Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI To the United States Court of Appeals For the Sixth Circuit.

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APPENDIX A.

OPINIONS AND ORDERS BELOW.

Opinion of the United States Court of Appeals for the Sixth Circuit. [365 F. 2d 199, 6th Cir. 1966.]

(Decided August 19, 1966.)

Before: WEICK, Chief Judge, PHILLIPS and CELEBREZZE, Circuit Judges.

CELEBREZZE, Circuit Judge. Appellant, Leslie D. Stickler, appeals from an order of the District Court denying his petition for a writ of habeas corpus. Appellant, an attorney, was indicted and convicted in the Common Pleas Court of Hamilton County, Ohio, of selling securities without having been licensed as a security dealer, and selling unlicensed securities.[1] The conviction was affirmed by the Court of Appeals, First Appellate District of Ohio, and the Supreme Court of Ohio declined review, 174 O. S. 382. The Supreme Court of the United States denied certiorari, 375 U. S. 438. Appellant instituted this action by filing a petition for a writ of habeas corpus in the United States District Court for the Southern District of Ohio, Western Division.

Appellant contends that the Ohio Securities Act is invalid under the due process clause of the Fourteenth Amendment because the procedural provisions create an evidentiary presumption that Appellant made an unlawful public offering of promissory notes and shifted to the Appellant the burden of proving his innocence.

In a companion case, *Shott v. Tehan,* No. 15,538,[2] which arose on similar facts and an identical indictment,

---

[1] The two-count indictment was based upon the provisions of Ohio Revised Code Section 1707.44(A) and (C).

[2] Decided the same day as the instant case.

this Court held constitutional Ohio Revised Code Section 1707.45 which places on a defendant the burden of proving the exempt status of a promissory note. That decision is adopted here.

However, there are several additional issues presented in this case which were not present in *Shott v. Tehan, supra*. Appellant first argues that his constitutional right to an impartial jury was violated by the failure of the trial court to protect the jury against extrinsic and prejudicial influence.

While Appellant's jury was being impanelled, one John Ruf, also indicted for similar offenses and slated to go to trial immediately after Appellant, disappeared. On the night of his disappearance, Ruf's attorney appeared on television and made the following statement:

> "Well, Mr. Ruf has been extremely upset and depressed ever since Leslie D. Stickler's financial dealings became public. Mr. Ruf lost his life savings through loans made to Stickler. He felt responsible for the losses of his friends and relatives who also invested with Stickler. He has been unable to find a job and he has been very nervous. Mr. Ruf was in the office Tuesday morning to discuss his trial which was scheduled for next Monday. He was here for about two hours, he left at noon and has not been seen or heard from since.
>
> "I only hope that he will be located in time to go to trial on Monday so that his complete innocence of any criminal wrong-doing can be established."

Appellant's attorney was granted permission by the Court to determine if any of the prospective jurors had heard this television broadcast. Three had. One stated he believed that anybody who had heard the broadcast would have formed an opinion prejudicial to the defendant. That juror was removed for cause. The second juror

was removed by a peremptory challenge. The third juror was not challenged, although at the time of his disclosure that he had heard the broadcast, the defendant had not exhausted his peremptory challenges.

After the trial began, the Cincinnati newspapers reported that Ruf had been found dead with a bullet in his head. One of the news articles, entitled, "Stickler Case Figure Is Dead," reported, in part, the following:

> "The body of John J. Ruf, 57, indicted in a multi-million dollar investment fraud, was drawn from the Ohio River. * * * There was a bullet wound in his head. * * * The Homicide Squad was investigating to determine whether Ruf, missing for a week, had shot himself or was a victim of foul play.
>
> "Ruf, a bookkeeper was involved in the Leslie D. Stickler case now on trial in Common Pleas Court. Ruf's family said late Wednesday they feared for his life because he had been 'despondent and confused' since he, Stickler and two others were indicted a month earlier.
>
> "After Ruf's body was found, Eugene Smith, Attorney for Stickler demanded police protection for his client. 'Ruf was ready to spill the beans and Stickler is ready to do the same,' Smith declared.
>
> "The charges arose from Ruf's involvement with Stickler, 38, Amberley Village attorney accused of illegal financial dealings in a complicated investment of $2.5 to $3 million by a number of persons. Stickler's trial started Thursday.
>
> "Ruf, friends said, felt he had been 'a fool and a dupe,' but denied that he had done anything illegal."

Appellant's request to interrogate the jurors was denied by the trial court. Appellant claims the article was presumptively prejudicial to him and that it should be presumed the jurors had read the article.

The trial court on several occasions throughout the trial instructed the jurors to refrain "as far as humanly possible from either listening to the radio or television broadcasts or reading the newspaper, any article that concerns this case." During the voir dire the Court instructed the jurors as follows:

> "But this Court will caution you, as long as you are a prospective juror, if you become a juror, refrain, as far as it is possible, humanly possible, from either listening to the radio or television broadcasts or reading the newspaper, any article that concerns this case. This case and your verdict, if you serve as a jury, must be based absolutely upon the evidence that you hear in this courtroom and the law which the court gives you to apply to the facts as you find them. All right, I think that is sufficient. I did have a little restraint on what I said to you, because it is utterly impossible for this Court to control your thoughts of what you see when you are away from the court house, or even while you are sitting here. All I can give you is the rule, and it is very, very important."

In *Irvin v. Dowd*, 366 U. S. 717 (1961), a habeas corpus proceeding, the Supreme Court held that the failure of the State to accord a fair hearing to one accused of a crime violates the due process clause of the Fourteenth Amendment; and a jury trial is not fair unless the jury is impartial.

The challenger has the burden of persuasion whether the jurors are impartial in the constitutional sense. *Geagan v. Gavin*, 292 F. 2d 244, 246 (C. A. 1, 1961), cert. denied, 370 U. S. 903, 82 S. Ct. 1247, 8 L. Ed. 2d 399 (1962). This burden is one which must be carried " 'not as a matter of speculation but as a demonstrable reality.' " *United States ex rel. Darcy v. Handy*, 351 U. S. 454, 462, 76 S. Ct. 965, 100 L. Ed. 1331, 1338 (1956); *Stroble v. State of*

California, 343 U. S. 181, 198, 72 S. Ct. 599, 607, 96 L. Ed. 872, 885 (1952). See also *Adams v. United States ex rel. McCann*, 317 U. S. 269, 63 S. Ct. 236, 87 L. Ed. 268, 276 (1942). In determining whether a juror is impartial or not, the Supreme Court said in *Irvin v. Dowd, supra*:

> "It is not required, however, that the jurors be totally ignorant of the facts and issues involved. In these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse the interest of the public in the vicinity, and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case. This is particularly true in criminal cases. To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court. *Spies v. Illinois*, 123 U. S. 131; *Holt v. United States*, 218 U. S. 245; *Reynolds v. United States, supra.*"

The test is whether the publicity created such a deep impression upon a juror such as to raise a presumption of partiality, and which would close the juror's mind against testimony offered in opposition to the purported facts. *Reynolds v. United States*, 98 U. S. 145 (1878); *Irvin v. Dowd, supra.*

In the *Irvin* case, the petitioner had committed multiple murders. Many passion arousing events were reported in the newspapers. The inflamed and prejudicial news coverage was such that 268 prospective jurors were excused for cause, and ninety percent of the jurors examined entertained some opinion as to the guilt of the

accused. The newspapers announced the petitioner had confessed to six murders. The Supreme Court held petitioner was not accorded a fair and impartial trial. A similar fact pattern was present and a similar result was reached in *Shepherd v. Florida*, 341 U. S. 50 (1951). See also *Sheppard v. Maxwell*, ____ U. S. ____, decided June 6, 1966.

In *Krogmann v. United States*, 225 F. 2d 220 (C. A. 6, 1955), a newspaper article erroneously reported the defendant had admitted he took part in the crime. The Court held this statement raised a rebuttable presumption that the rights of the defendant had been prejudiced. See also *Briggs v. United States*, 221 F. 2d 636 (C. A. 6, 1955), and *Marson* v. *United States*, 203 F. 2d 904 (C. A. 6, 1953).

It would be a marked extension of the holdings in *Irvin* v. *Dowd, supra*, and *Sheppard* v. *Maxwell, supra*, to say that the reporting of Ruf's death would create such a deep impression upon the jury that as a matter of law there was a presumption of partiality. We cannot find that Appellant's constitutional right to a fair and impartial jury was denied by the Court's failure to interrogate the jurors to determine if they had read the article. An impossible standard would be created if the trial court was required to interrogate a jury to determine if they violated the Court's instructions to avoid news coverage of the case every time something was reported relating to the case. What was said in *Delli Paoli* v. *United States*, 352 U. S. 232 (1957), is applicable here:

> "It is a basic premise of our jury system that the court states the law to the jury and that the jury applies that law to the facts as the jury finds them. Unless we proceed on the basis that the jury will follow the court's instructions where those instructions are clear and the circumstances are such that the jury can

reasonably be expected to follow them, the jury system makes little sense. Based on faith that the jury will endeavor to follow the court's instructions, our system of jury trial has produced one of the most valuable and practical mechanisms in human experience for dispensing substantial justice."

We do not believe the news report of Ruf's death was so prejudicial to the Appellant that the trial court should have been compelled to interrogate the jury to determine if they had read the article. The crime for which the Appellant was charged was a technical one. There were not present passion arousing events, nor was there a hue and cry for Appellant's conviction. The reporting of Ruf's death did not have the effect of pointing an accusing finger of guilt at the Appellant. Compare this with the news report that the defendant confessed, *Irvin* v. *Dowd, supra,* and *Krogmann* v. *United States, supra,* and the prejudicial statements in *Coppedge* v. *United States,* 272 F. 2d 504 (C. A. Dist. of Columbia, 1959), *Marson* v. *United States, supra,* and *Briggs* v. *United States, supra.*

We find no threat or menace to the integrity of the trial, nor abuse of discretion on the part of the trial court in refusing to interrogate the jury on the question of an article appearing in a local newspaper. Further, Appellant has not brought forth any evidence persuasive that the jurors did not render a fair and impartial verdict.

Upon examination, we find that Appellant's other claimed errors present no meritorious constitutional questions. The judgment of the District Court is affirmed.

Judgment of the United States Court of Appeals for the Sixth Circuit, August 19, 1966.

APPEAL from the United States District Court for the Southern District of Ohio.

THIS CAUSE came on to be heard on the record from the United States District Court for the Southern District of Ohio and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

It is further ordered that Respondent-Appellee recover from Relator-Appellant the costs on appeal, as itemized below, and that execution therefor issue out of said District Court.

Order of the United States Court of Appeals for the Sixth Circuit, Denying Rehearing, September 21, 1966.

Upon consideration, it is ORDERED that the petition for rehearing be denied.

Memorandum Opinion and Order of the United States District Court for the Southern District of Ohio, Western Division, August 6, 1964.

The above-mentioned memorandum opinion and order are reproduced in the Record Appendix, pp. 647a-649a.

APPENDIX B.

CONSTITUTIONAL PROVISIONS AND STATUTES.

Constitution of the United States.

Amendment VI:

"In all criminal prosecutions, the accused shall enjoy the right to a * * * public trial, by an impartial jury of the State and district wherein the crime shall have been committed * * *."

Amendment XIV, Section 1, Clause 2:

"* * * nor shall any State deprive any person of life, liberty, or property without due process of law * * *."

STATUTES.

Ohio Revised Code.

§ 1707.01 Definitions.

As used in sections 1707.01 to 1707.45, inclusive, of the Revised Code:

* * *

(B) "Security" means any certificate or instrument which represents title to or interest in, or is secured by any lien or charge upon, the capital, assets, profits, property, or credit of any person or of any public or governmental body, subdivision, or agency. It includes shares of stock, certificates for shares of stocks, voting-trust certificates, warrants and options to purchase securities, subscription rights, interim receipts, interim certificates, promissory notes, all forms of commercial paper, evidences of indebtedness, bonds, debentures, land-trust certificates, fee certificates, leasehold certificates, syndicate certificates, endowment certificates, certificates or written instruments in or under profit-sharing or participation agreements or

in or under oil, gas, or mining leases, or certificates or written instruments of any interest in or under the same, receipts evidencing preorganization or reorganization subscriptions, preorganization certificates, reorganization certificates, certificates evidencing an interest in any trust or pretended trust, any investment contract, any instrument evidencing a promise or an agreement to pay money, warehouse receipts for intoxicating liquor, and the currency of any government other than those of the United States and the Dominion of Canada but such sections shall not apply to bond investment companies or to the sale of real estate * * *."

(C) (1) "Sale" has the full meaning of "sale" as applied by or accepted in courts of law or equity, and includes every disposition, or attempt to dispose, of a security or of an interest in a security. "Sale" also includes a contract to sell, an exchange, an attempt to sell, an option of sale, a solicitation of a sale, a solicitation of an offer to buy, a subscription, or an offer to sell, directly or indirectly, by agent, circular, pamphlet, advertisement, or otherwise.

(2) "Sell" means any act by which a sale is made.

* * * * *

(E) (1) "Dealer," except as otherwise provided in section 1707.01 to 1707.45, inclusive, of the Revised Code, means every person, other than a salesman who engages or professes to engage, in this state, for either all or part of his time, directly or indirectly, in the business of the sale of securities.

(2) "Licensed dealer" means a dealer licensed under such sections.

§ 1707.02 (G) Exempt Securities.

Commercial paper and promissory notes are exempt when they are not offered directly or indirectly for sale to the public.

§ 1707.44 Violations.

(A) No person shall engage in the business of acting as broker for others in the purchase or sale of securities, sell securities, cause them to be sold, offer them for sale, cause them to be offered for sale, or engage in the business or buying, selling, or dealing in securities otherwise than in transactions through or with a licensed dealer, unless the securities are of a kind specified in division (G) or (I) of section 1707.02 of the Revised Code, the transactions are of a kind specified in divisions (B) to (L), inclusive, and (O) and (Q), inclusive, of section 1707.03 of the Revised Code, or in section 1707.04 or 1707.06 of the Revised Code, or the transactions are exempt under section 1707.34 of the Revised Code, without being licensed by the division of securities.

(B) No person shall knowingly make or cause to be made any false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application, or written statement, for any of the following purposes:

(1) Complying with sections 1707.01 to 1707.45, inclusive, of the Revised Code, in regard to registering securities by description;

* * *

(4) Selling any securities in this state.

(C) No person shall knowingly and intentionally sell, cause to be sold, offer for sale, or cause to be offered for

sale, any security which comes under any of the following descriptions:

(1) Is not exempt under section 1707.02 of the Revised Code, nor the subject matter of one of the transactions exempted in sections 1707.03, 1707.04, and 1707.34 of the Revised Code, has not been registered by description or qualified, and is not the subject matter of a transaction that has been registered by description; * * *.

§ 2945.59 Proof of defendant's motive.

In any criminal case in which the defendant's motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing an act is material, any acts of the defendant which tend to show his motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing the act in question may be proved, whether they are contemporaneous with or prior or subsequent thereto, notwithstanding that such proof may show or tend to show the commission of another crime by the defendant.

APPENDIX C.

MISCELLANEOUS.

Promissory Notes Upon Which Petitioner's Indictment Was Based.

(See opposite page. These notes also appear at pp. 651a and 653a of Supplemental Record Appendix.)

STATE'S EXHIBIT No 3

1000 00/100 ..... CINCINNATI, Ohio ..... 1/3 ..... 19 61

..... after date for value received, individually or collectively,

I promise to pay ROBERT STEFFEN ..... or order,

the sum of SIX THOUSAND & 00/100 ..... Dollars,

with interest at the rate of ..... per cent per annum, payable ..... annually.

And I do hereby authorize any Attorney at Law to appear for ME in an action on the above note, at any time after said note becomes due, in any Court of Record situated in the County where ..... then reside or in the County where I

signed this warrant and being in the United States, to waive the issuing and service of process, and confess a judgment in favor of the legal holder of the above against ME, for the amount that may then be due thereon, with interest at the rate therein mentioned, and costs of suit, and to waive and release all errors in said proceedings and the right of appeal from the judgment rendered.

"I" or "I or any one of us"

Leslie Stuller ..... at ..... County,

To ..... at ..... County,

Due 2/4/61 ..... at ..... County,

..... at ..... County,

13a

STATE'S EXHIBIT No. 4

37676

6000.00 Ten

CINCINNATI, Ohio 1/3 1961

after date for value received, individually or collectively,

I promise to pay ROBERT STEFFEN or order,

the sum of SIX THOUSAND & Ten Dollars,

with interest at the rate of per cent per annum, payable annually.

I do hereby authorize any Attorney at Law to appear for ME in an action on the above note, at any time after said note is due, in any Court of Record situated in the County where I then reside or in the County where I

"I" or "I or any one of us"

and this warrant and being in the United States, to waive the issuing and service of process, and confess a judgment in favor of the holder of the above against ME, for the amount that may then be due thereon, with interest at the rate therein mentioned, and costs of suit, and to waive and release all errors in said proceedings and the right of appeal from the judgment rendered.

Leslie R Stubbs at County,

3/3/61 at County,

at County,

at County,

14a

Affidavits of Edward E. Olsvig, Floyd W. Gibson and Ray Cole Re Perjured Testimony of Prosecution Witness Sestito.

AFFIDAVIT "A."

My name is Edward E. Olsvig. I reside at 560 Sunny Lane, Cincinnati 44, Ohio.

Regarding a conversation of early June 1961 between Pat Sestito and myself, pertaining to the involvement of he, Mr. Ed Schott, Jr. and Less Stickler as to monies he loaned them separately, he informed me that he intended to testify at Mr. Stickler's trial for the prosecution and that he was going to testify in such a way, if possible, to favor Ed Schott in an attempt to make Stickler the goat in the whole situation. By doing so he would be repaid by Ed Schott the money he lost to Stickler. This offer of repayment, he said, was made by Ed Schott to himself in an effort to get Schott off the hook.

The first thing that he was to testify to was that it was Stickler who told him of his construction of garages, hotels, etc. in order to get him to invest some money, when in reality it was Ed Schott who had made these representations to him; that he did not hear them from Stickler.

Secondly, he was to testify that he came to Stickler from information that he had picked up through the local grapevine and that Ed Shott had not sent him to Stickler, when in reality, he, Ed Shott, did refer Pat to Stickler as a person to whom he could lend his money directly because Ed Shott was cutting down pretty well on the amount that he was personally borrowing. Pat said he was told by Ed Shott that he would be repaid by himself the total amount he had lost to Stickler if he would testify in the above manner. This conversation took place in my office and, at that time, I told Pat I didn't believe he had

$6000.00 invested. He, thereupon, produced an envelope which contained the notes and post dated checks and gave them to me to look at. I added up the notes and post dated checks and they did total a little over $6000.00. I told Pat, at this time, that he was nuts for sticking his neck out for a perjury charge even if he did get his money back, that I thought someone would probably trip him up and that he would still lose his money as well as possibly do a stretch in jail for it. Later on, about a year later, when I talked to Pat, he said he had gotten some of his money back from Shott and he was to get the rest soon.

I make this statement voluntarily, out of my own free will this 31st day of December, 1963.

EDWARD E. OLSVIG.

(Jurat omitted.)

AFFIDAVIT "B."

My name is Floyd W. Gibson, and I live at 1391 Burdett Avenue, Cincinnati, Ohio. I am employed for the County of Hamilton.

During 1961, I was employed as a part-time furniture salesman for Ray Cole, who did business at 130-132 East Court Street, Cincinnati, Ohio, under the name of R. Cole and Company. One afternoon, in the last week of June, 1961, I was sitting outside Mr. Cole's office, waiting for him to finish conversing with Pat Sestito, a furniture salesman who also worked for Mr. Cole from time to time.

While I could hear their conversation easily, I didn't pay any particular attention to it, until, I heard the names "Shott" and "Stickler." As Stickler had been my attorney in the past, and as both names "Stickler" and "Shott" had been appearing in the newspapers daily on some criminal

business, I took an interest in what these two men were saying.

Pat was telling Ray that at the suggestion of Ed Shott, he, Pat, had presented false testimony at the trial of Les Stickler and that at Shott's trial, Pat had testified favorably for Shott. Pat also told Ray that Shott had promised to pay Pat back every dime that Pat had lost to Stickler if Pat would change his testimony to blame Stickler and not Shott. Another thing that I heard Pat tell Ray was that it was Shott, not Stickler, who had told Pat about building contractors.

Pat was speaking pretty loudly and Ray cautioned him that I was right outside the door, but Pat said, "that don't make any difference—I want to talk to him anyway." When Pat did come out of Ray's office, he came over to me and asked me if I didn't want to make some dough. When I asked him what I had to do to make it, he told me that as he knew that I knew Stickler, that maybe Shott would want me to testify against Stickler in his coming trials. When I told Pat that I didn't even know what both men were being indicted for, what could I say in a trial? he (sic) told me that I didn't need to know anything—Mr. Shott would tell me what to say. He left then, telling me to think it over as there was some good money to be made.

I make this statement voluntarily of my own free will this ____ day of _____, 1964.

FLOYD W. GIBSON.

(Jurat omitted.)

AFFIDAVIT "C."

My name is Ray Cole, I live at 1502 Corvallis, Cincinnati, Ohio. I've lived there for ten years, and I have had a business at 130 and 132 East Court Street, since 1950. Pat Sestito, who formally (*sic*) worked for me was talking to me on Wednesday, June 28, 1961 and he told me that he had to go over and make a statement or a testimony for Edgar I. Shott, who was being tried at that time. He asked me, "Ray, what would happen if I would change my testimony?" I said, "Pat, that's entirely up to you, I have nothing to do with that." He said, "Well, I can get something out of it, I can get some bread out of it if I change it, and I would be a fool not to do it." I said, "That's entirely up to you, Pat." He said, "Well, that's what I wanted to know, I'll come back over and see you later." I said, "O. K. Pat."

Later, on the same day, he came over to my establishment and said that he had changed his testimony to favor Shott; that he did not mention any representations on Shott's part as to the contracting business; that Shott promised to pay him for making this testimony as favorable as possible.

He further told me on this same day, that he had deliberately presented perjured testimony in the trial of Leslie D. Stickler at the suggestion of Edgar I. Shott who promised to indemnify him for every bit of money that he had lost to Stickler if he would lie about Stickler on the witness stand and, before that, in his testimony before the Grand Jury and the Prosecutor's office. Sestito said that it was Shott, not Stickler, who made misrepresentations about contractors and that Shott told him to put the blame on Stickler, which he did; that Stickler never did make any representations about contractors to him. He further stated that Shott never did send him to Stickler; that he

and Stickler had been doing business in reference to a furniture store since June of 1960; that one day in late November, he was sitting in Stickler's office and he showed Stickler a check which he received from Shott and proceeded to tell Stickler of Shott's money deal. He further stated that Stickler immediately told him that Shott was loaning him the money; that Pat asked Stickler if he could loan him money direct as long as he did not have any money with Shott at the time, and Stickler said it was alright; that Pat jumped at the chance to loan directly to Stickler because in that way he could keep all of the interest he received for the loan, because Shott took half of the interest when Shott loaned the money directly to Stickler; that there was no discussion as to any contractors; that the time period of the loan and the amount of interest to be received for the period of the loan was the only thing that was discussed.

During the course of this conversation, I cautioned Pat that one of my salesmen, Bill Gibson, was sitting on a sofa right outside my office and that he might be able to hear our conversation. Pat said that he didn't care since he wanted to see Gibson anyway. Later on I discovered that Bill Gibson was also known as Floyd W. Gibson. After our conversation was over, Pat did go out and talked to Gibson but this was not in my presence.

Sestito further stated that he knew that Shott was instrumental in getting other witnesses who also dealt with him first, and then with Stickler, to lie about Stickler and to testify against Stickler on the same proposition of repayment of whatever loss they had with Stickler as to unpaid loans.

Subsequent to this conversation, Pat revealed to me that Ed Shott did in fact send him originally to Stickler,

but that since he already knew Stickler personally, and in fact was doing some business with Stickler on another matter, he did not ever tell Stickler that Shott sent him to him.

I make this statement voluntarily of my own free will this 7th day of Jan., 1964.

RAY COLE.

(Jurat omitted.)

Order of Dismissal of Indictment, United States v. Leslie D. Stickler, U. S. District Court, Southern District of Ohio, Western Division, Case No. 9922 December 6, 1961.

Pursuant to Rule 48 of the Federal Rules of Criminal Procedure, and by leave of Court first had and obtained, the within Indictment is hereby dismissed.

/s/ JOHN H. DRUFFEL,
United States District Judge.

Excerpts From Statement of Honorable John H. Druffel, United States District Judge, Presented to Federal Grand Jury, Southern District of Ohio, Western Division In Re the Matter of United States vs. Leslie D. Stickler, Case No. 9922—May 22, 1961 and April 21, 1961.

Monday 5/22/61—Honorable John H. Druffel

In the Matter of the Grand Jury:

[2] The Court: * * * Before recessing, I think I should talk about an indictment that was returned the last time you were in Court, which was March the 15th.

You will remember that case, and you have been reading I assume, all these stories about this $3 million

swindle by Leslie Stickler and so on. You remember back on March 15th you had a witness named Richard Brower who testified before you that by long-distance call from Cincinnati to Miami, where he was then staying, Stickler swindled Brower of $6,000.

You know that in the grand jury you only hear one side of the case. You never hear any cross examination and the defendant is not present. You only hear one side of it. So when a witness comes before you presented by the Government and takes an oath, you have to believe, of course, what he is saying is the truth.

[3] Some of you probably read that after this Court had made a firm date for the trial of Stickler on Brower's complaint, that a few days after that was done we called the lawyers in and the District Attorney and told them that this Court would have to indefinitely vacate the trial date which had been previously given. Of course, the District Attorney was very unhappy about it, trying to persuade the Court not to go through with it. But I must explain to you the reasons why the trial date was vacated by this Court.

What you didn't know and we didn't know and I assume the District Attorney didn't know was that when Brower testified before you that he had been swindled by Stickler, the truth and the fact was that Brower was an active accomplice of Stickler for the past five years, and at the very time he was testifying before you that he was swindled by Stickler, he had a profit showing on Stickler's books of more than $62,000.

Now, there was another reason—* * * The very next day, March the 16th, he was subpoenaed before the Ohio Securities Commission; and they told him, of course, that he was under investigation for fraud in association with

Stickler and he was sworn as a witness to tell the truth and so on.

[4] * * * I noticed an item in the paper [that he] * * * declined to testify * * *

I started analyzing the indictment * * * called Columbus and talked to them * * *

[5] I then took the position, of course, that anybody that took the Fifth Amendment was not a desirable witness * * * to convict somebody else, when we know here that he was an active accomplice for five years with that same man. * * *

Well, for my action in postponing it I got a nice crack from the Enquirer by way of an editorial which criticized me for continuing the case, saying that Stickler and the complainants were entitled to prompt trial. Of course we could have a prompt trial here with a discredited witness, and a jury might acquit Stickler on his evidence after he was cross examined and he was forced to admit in open court what I am telling you now about his activities in the past five years. * * *

[6] * * * Well, I think I will bring you up to date on what happened since. Those are some of the things that you must take when you are in public life, when they take a crack at you like that. But at any rate, here is what has happened. * * *

[7] * * * Now, it appears to me that at this late date in view of that, that the real reason why he refused to answer there was that if he would have answered those questions honestly and truthfully or suffered the pains of perjury there, he would have been in direct conflict with his testimony before the jury here.

Now, frankly, I had no alternative under the circumstances but to conclude, after what I found out there, that

Brower really perjured himself before your jury, but that is something that is impossible of proof because we can't read his mind.

But I have got a note here that one of the counts in one of these Hamilton County indictments concerned a transaction on December the 29th, which is four days before he claimed he was swindled by Stickler—just that close.

And, of course, we have figures here which I will not go into, showing that Stickler—Well, maybe I better. Brower, you understand, said he was swindled by Stickler by a long-distance telephone call on January the 3d. Here is a copy of Stickler's books. We got all of those figures through the Bankruptcy Court. Stickler is in bankruptcy, and all [8] of these were established over there.

But they show here that on January 1st, '61 that Stickler had sent Brower $6,120. On January 2 he sent him $1,250. On January 3, the day that he said he was swindled, he sent him $2,500.

Now, how could Brower honestly go before your group and tell you he was swindled when he was in direct touch with him and he had been an active accomplice of this man for five years?

So that's the story, the reason why we continued it. If you read it in the paper, you read the Enquirer editorial, you will know why.

[In Answer to the United States Attorney:]

[9] The Court: * * * The point is that the grand jury of Hamilton County has returned five indictments against Brower with 30 counts, which are 30 separate offenses.

I think what I have told you here is sufficient to reassure you that this Court is right in indefinitely postponing the case rather than go to trial with a discredited witness who has now been indicted in all these cases [10]

and the fact that he was an active accomplice in this big fraud over five years. Now that's all. I don't know what we can do otherwise.

* * *

The Court: * * * and now you have heard the second side of the case which Mr. Brower will be facing. And I think this, that if the real—If we could prove it, I would be glad to present you with Mr. Brower on a charge of perjury because, under the circumstances, how could he honestly claim that he was defrauded when he was one of the principal conspirators [11] over the past five years in swindling a group of people here to the extent of $3 million that was involved.

Now, that is the whole story. * * *

4/21/61—Honorable John H. Druffel

[4] The Court: * * * But first, I think it's important that we consider the probabilities of whether or not Mr. Brower was actually defrauded, as he claims. I have before me some figures concerning Mr. Brower's activities with Stickler, which date back five years * * * this record shows that during the time Brower had loaned Stickler $211,250 and, at least on the books, he had a credit of $273,000 which indicated, on the books at least, he had a profit on his transactions of $62,000.

Now, it must be borne in mind that Brower's arrangement with Stickler called for interest at the rate of 240 percent; and it appears that Brower would keep half of that interest and pay the other half to customers [5] that he procured to put up money that Stickler could play with.

And not only that; it also appears from the books that Ella Brower was a customer of Stickler, to the extent of

$83,000, and the amount shown on the books to her credit was $66,000, so she had a slight loss.

So that from the record it appears here beyond reasonable doubt that Brower, after doing business with Stickler for five years, certainly must have been aware of what Stickler's business was and how he operated. At least he convinced the Grand Jury that he had been defrauded of $6,000 and the Grand Jury returned an indictment against Stickler charging fraud by interstate communications of $6,000.

[6] * * * Now, as far as this Court is concerned, the refusal of a witness to testify on grounds that it may incriminate him may not in itself be considered an admission of guilt, but we cannot escape the conclusion that at least there is an implication of guilt. And since the Government has to prove their case before a petit jury, relying on Brower's testimony, they have to prove it beyond reasonable doubt, it appears to the Court that Brower's answers under the circumstances, the very day after he testified before the Grand Jury, are so inconsistent that it destroys his credibility as a witness. * * *

[7] * * * I think that under the circumstances this Court has no alternative but to vacate this setting, this trial setting, indefinitely, so that we will be able to give the Hamilton County prosecutor a clear field to complete his investigation and take whatever action he and the Grand Jury decide. This case pending here may have the effect, and has up to now, of probably holding up the County prosecutor from completing his investigation and proceeding with the big end of this case, which is more than three million dollars. * * *

[8] The Court: Well, Mr. Stueve, I appreciate your position in this case. But in view of what I have found out

this week and his refusal to testify on the grounds that it may incriminate him, presently at least, it is so damaging to his credibility as a witness that we have no alternative under the circumstances but to do as we have done here.

I venture to suggest that if all these facts were known to the Grand Jury and known to the District Attorney at the time that an indictment would not have been returned in this case.

* * * * *

Excerpts From Proceedings — In Re: Peg D. Shaw — Hampden County Superior Court, Springfield, Massachusetts, Case No. 16942 Before Judge Beaudreau, November 4, 1966 (Unreported).

The Court: This matter is a citation for contempt of court to Peg D. Shaw.

"You are hereby notified that this Court shall conduct a hearing Friday, November 4, 1966, at 10:00 A.M. in the criminal session, Courtroom No. 1, of the Superior Court sitting at Springfield, County of Hampden, in order to determine whether the order of this Court; to wit, that no mention was to be made in the newspapers concerning a Voir Dire Hearing on a motion to suppress evidence in the trial of Commonwealth vs. William Wooten and George Staley heard October 27, 1966, was violated by said respondent.

"You are hereby directed to bring with you an attorney to represent you."

This hearing is to find out whether or not the order of the court was violated by the respondent Peg Shaw,
* * *

* * * * *

The Court: Now, I have read the citation on October 27, 1966, after the lunch recess, a Voir Dire was held on a motion to suppress in the case of Commonwealth vs. Wooten and Staley.

I don't have the indictment numbers before me now, but they involve allegations with respect to narcotic violations being present, and unlawful possession and unlawful sale and being in the company where narcotics were, and I believe there were some five or six indictments.

Now, within ten minutes after that hearing started, the reporter Shaw, who was sitting in front of me here on the right, was called to the bench, on the right side of the bench here, and in the presence of Attorney Henry Weissman, who represented the defendant Staley, and Attorney John McDonough, who represented the defendant Wooten, and Assistant District Attorney Leonard E. Gibbons, all being present, reporter Shaw was told not to mention anything in her account in the newspaper she represented concerning the motion to suppress. And upon inquiry by either her or some attorney, she was further told that the ban included trial time, and that after the trial she was at liberty, or anybody was at liberty to publish anything they wanted concerning the motion to suppress.

Again, within a half hour of the first admonition, I again called reporter Shaw to the bench, and at this time she was there solely before me, and I told her that I wanted it clearly understood that she was not to mention anything with respect to the motion to suppress until the trial was over.

I further emphasized that I wanted no misunderstanding about the matter, and I was told by her, she did mention the name of Judge Macaulay, and my recollection on this point is that she had talked about such similar matters

of Voir Dires with the Judge. There was no further inquiry by her with respect to anything else.

Now, on October 28th, the following day, at 10:00 A.M., I ruled on a motion to suppress, and denied it. And stated my reasons for it.

We then started the trial of Commonwealth vs. Staley and Wooten, and the same evidence that was heard at the Voir Dire Hearing was repeated almost word for word in substance at the trial. The article that was published on Saturday, October 29, 1966, in the Springfield Union recites in part the evidence that was heard both at the Voir Dire and at the trial, and concludes as follows:

"Before the trial started, Judge Beaudreau denied a defense request to suppress evidence—in this case the bag of packets—on the grounds that the evidence was secured by unreasonable search and seizure.

"The denial followed a three-hour hearing on the motion Thursday, in the absence of a jury."

Now, no one but reporter Shaw could have written this article without being present in the Courtroom, and I don't think there is any question but that she was in the Courtroom all during the recitation of the evidence.

Now, as a result of these articles, on the motion of the defendant Staley, I declared a mistrial at 10:00 A.M. on October 31, 1966, and explained to the jury my reasons for it.

* * * * *

The Court: * * * when you recite the evidence at the trial, which is perfectly alright, the first part of this article I find no fault with at all, the reporter had a perfect right to report the evidence at the trial. The part that I find fault with is the last paragraph—Before the trial started, Judge Beaudreau denied a defense request to sup-

press evidence—in this case the bag of packets—on the grounds that the evidence was secured by unreasonable search and seizure. The denial followed a three-hour hearing on the motion Thursday in the absence of a jury.

Now, if a jury reads that, they are not versed in the technicalities of the law of illegal search and seizure, which is a field that was looked upon by our Supreme Court to be somewhat nebulous, and you can't expect the jury to understand those technicalities, when they read that the Judge heard this evidence and he denied the motion to suppress, a jury would reasonably conclude that since the Judge heard all this evidence, it must be good evidence and it must be believable evidence or he wouldn't have denied the motion.

And as I read this thing, as I interpret it, you can understand how a jury would say that, well, the Judge heard all that evidence and it must be good evidence. He believed it, so why shouldn't we believe it, and that is why I find the defendant has been harmed here and that is the part that I declared a mistrial on. On that ground, and those are the reasons I believe that I gave to the jury on it.

* * * * *

Defense Counsel: Your Honor, if I may, on behalf of Miss Shaw, I would like to suggest that she was simply fulfilling what she understood to be her obligation as a reporter to report the facts.

There was certainly no intention on her part to violate any order of this court. As I say, she did not report the testimony, the substance of the Voir Dire, because she understood your Honor to have prohibited that. She reported the fact of the hearing because she did not understand that your Honor had prohibited that or had intended to prohibit that, and for that reason, your Honor, I would

ask that this case be dismissed because there was no intended violation of the valid order of this court.

Your Honor, there was no intentional contempt, if there was, in fact, contempt. Your Honor, it was totally unintended and unintentional.

* * * * *

The Court: Now, a recent Supreme Court decision, particularly the Sheppard case, seems to say that it's no longer a game of finding out who is at fault if a fair trial is not given to a defendant. It's now encumbent on the judge, he is the person who is responsible to see that a fair trial is given to a defendant. He has to do certain things on his own motion and to take steps to prevent the defendant from not getting a fair trial.

I always felt it was encumbent upon me to carry out those rules, and I, in this case particularly, wanted to make sure that no inexperienced reporter would misunderstand my intentions, and when the Daily News reporter Mr. Philip Brunelle, who covered the trial for the Daily News, the same trial, I called him up and I told him the same thing I had told reporter Shaw, and he understood me because it is apparent that he understood me, because nothing was printed in the Daily News with respect to the motion to suppress.

Now, I take into consideration what you told me with regard to her understanding. I take that into consideration, not on the question of whether or not a contempt was committed here, but on the question of mitigation, if any—

* * * * *

Defense Counsel: The reporter is not seeking to hide behind the 1st Amendment, your Honor. I would suggest, however, in this case the 1st Amendment is there for your Honor to consider it.

The Court: I am considering it and I certainly don't think it's in any violation of the 1st Amendment to require that a fair trial be given to a defendant. You can't give a defendant a fair trial if you report something that the judge did in the absence of the jury, and then tell the jury about it.

* * * * *

The Court: Well, if there was any hesitancy on her part, whether she misunderstood or hesitancy of what I said, there was no great immediate need of publishing this on October 29th because the trial had not concluded.

And there was ample time for her to inquire on Monday morning—this trial had to go on—I think it was good for another day at least, and I know it wasn't terminated certainly—and there was plenty of time for her to inquire whether this could be done.

No, I find Miss Shaw, the respondent here, guilty of contempt, and I'm going to impose a fine, a modest fine of $100.00, and give her until December 15 to pay it.